

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

THOMAS J. GAUGHAN

Claimant

VS.

LAIRD NOLLER FORD, INC.

Respondent

AND

REPUBLIC INDEMNITY CO.

Insurance Carrier

Docket No. 1,022,563

ORDER

Respondent and its insurance carrier (respondent) requested review of the April 11, 2006, preliminary hearing Order for Compensation entered by Administrative Law Judge Brad E. Avery.

ISSUES

The Administrative Law Judge (ALJ) granted temporary total disability (TTD) compensation to be paid by respondent until further order or until claimant is certified as having reached maximum medical improvement (MMI), released to a regular job, or returned to gainful employment. The ALJ also ordered medical treatment with Dr. Ed Levy to be paid by respondent until further order or claimant has reached MMI.

Respondent argues that the ALJ exceeded his jurisdiction by awarding benefits, claiming that claimant's psychiatric condition did not arise out of and in the course of his employment. Accordingly, respondent requests that the ALJ's Order for Compensation be reversed.

Claimant argues that his testimony and the medical treatment records and medical opinions of Dr. Levy prove that his current psychological condition and need for further medical treatment was caused, aggravated, or accelerated by his work accident and resulting physical injuries.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record presented to date, the Board makes the following findings of fact and conclusions of law:

Claimant worked for 14 years as a salesman for respondent. On March 29, 2005, he fell, injuring his head, neck, back and knee. He was treated first by Dr. Michael McCoy and then by Dr. Joseph Sankoorikal for neck pain, bilateral trapezius discomfort and headaches. Dr. Sankoorikal initially determined claimant was at MMI on September 13, 2005. Claimant attempted to return to work but was unable to do so because of severe headaches. He continued to be treated by Dr. Sankoorikal until October 31, 2005.

Along with his medical problems, claimant suffered from depression and anxiety because of his pain, inability to work, and financial problems. Claimant testified that Dr. Sankoorikal told him that counseling would be helpful. Claimant said that Dr. Sankoorikal attempted to get approval for a referral to a psychiatrist, but the treatment was denied by respondent.¹ Claimant went to see Dr. Ed Levy, a psychiatrist, on his own in August 2005.

Dr. Levy's report of February 9, 2006, was included as an exhibit at the Preliminary Hearing. Dr. Levy is of the opinion that claimant is in need of psychiatric treatment, including appropriate medication for his neck and headache pain. Dr. Levy also believes that claimant needs psychiatric treatment for his bipolar tendency, which was not related to the accident. He said that claimant and his wife also benefit from couples therapy. Dr. Levy stated that "[a] good portion of their strife and stress is secondary to his inability to work following the fall and its consequences."²

Dr. Levy indicates that claimant has a history of drug abuse that predates his accident and is bipolar. According to Dr. Levy:

Both of these conditions enhance his vulnerability to the stresses surrounding the fall at work and difficulties that have followed this. In a similar way, the vulnerability created by his accident and the subsequent morbidity caused by these headaches has exacerbated his bipolar tendencies.³

On cross-examination, claimant admitted that he previously had treatment for sinus headaches but states that the headaches he suffers now are different than those he suffered before the accident. Claimant also admitted that he had an alcohol and drug problem while in college and some years after but said he has been clean and sober for

¹ Respondent, in its brief, disputes this.

² P.H. Trans. (Apr. 11, 2006), Cl. Ex. 1 at 1.

³ *Id.*

almost 18 years. He is a recovering alcoholic and goes to AA meetings twice week. He had never had any problem with depression or anxiety before his accident. Claimant denies having required psychiatric treatment before this accident.

In order for claimant to establish a compensable psychiatric condition, he must prove that it is directly traceable to the work-related physical injury.⁴ Dr. Levy opines that claimant's accident and resulting pain and disability exacerbated claimant's preexisting bipolar tendencies. Consequently, although claimant had preexisting conditions that predisposed him to psychiatric injury, the physical injury is the cause of the exacerbation and need for treatment. Claimant has not returned to the level of his preinjury baseline. Accordingly, his current condition and need for psychiatric treatment is directly traceable to claimant's work-related physical injury. The ALJ did not exceed his jurisdiction in ordering the additional TTD compensation and psychiatric treatment.

WHEREFORE, it is the finding, decision and order of the Board that the Order for Compensation of Administrative Law Judge Brad E. Avery dated April 11, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of July, 2006.

BOARD MEMBER

c: Jeff K. Cooper, Attorney for Claimant
Christopher K. McCurdy, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ See *Adamson v. Davis Moore Datsun, Inc.*, 19 Kan. App. 2d 301, 868 P.2d 456 (1994).